

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

*IN RE BROILER CHICKEN
ANTITRUST LITIGATION*

This Document Relates To: All Actions

Case No. 1:16-cv-08637

**SCHEDULING ORDER NO. 9 AND CASE
MANAGEMENT ORDER CONCERNING
DIRECT ACTION PLAINTIFFS**

The Court hereby enters this Scheduling Order No. 9. This order amends and supersedes Scheduling Order No. 7 (Dkt. 1231) and applies to Current and Future Direct Action Plaintiffs. It does not change any of the deadlines applicable to Class Plaintiffs.¹

DEADLINES APPLICABLE TO CURRENT DIRECT ACTION PLAINTIFFS

1. All dates subsequent to the deadline for substantial completion of document production listed in the Court's December 15, 2017 Scheduling Order No. 2 (Dkt. 574, pp. 2-4), and the dates in the Court's September 13, 2018 Scheduling Order No. 6 (Dkt. 1230), apply to Current Direct Action Plaintiffs except to the extent that the Court's orders specify otherwise.²

¹ "Class Plaintiffs" refers to Direct Purchaser Plaintiffs, Commercial & Institutional Indirect Purchaser Plaintiffs, and End User Consumer Plaintiffs. "Current Direct Action Plaintiffs" is defined in footnote 2, *infra*. "Future Direct Action Plaintiffs" is defined in footnote 7, *infra*.

² "Current Direct Action Plaintiffs" include all Direct Action Plaintiffs that have filed Complaints and were consolidated in *In re Broiler Chicken Antitrust Litigation* as of the date of Scheduling Order No. 7 (September 13, 2018). Specifically, Current Direct Action Plaintiffs are: Affiliated Foods Plaintiffs (Affiliated Foods, Inc.; Alex Lee, Inc.; Merchants Distributors, LLC; Associated Grocers of New England, Inc.; Big Y Foods, Inc.; Fareway Stores, Inc.; Piggly Wiggly Alabama Distributing Co., Inc.; Woodman's Food Market, Inc.); Sysco Corporation; US Foods, Inc.; Winn-Dixie Plaintiffs (Winn Dixie Stores, Inc.; Bi-Lo Holdings, LLC); Action Meat Plaintiffs (Action Meat Distributors, Inc.; Associated Food Stores, Inc.; Bashas' Inc.; Certco, Inc.; IRA Higdon Grocery Company, Inc.; Nicholas & Co., Inc.; Pacific Agri-Products, Inc.; Pacific Food Distributors, Inc.; Troyer Foods, Inc.; URM Stores, Inc.; Weinstein Wholesale Meats, Inc.); Jetro Holdings, LLC; Associated Grocers of the South (Associated Grocers of the South, Inc.; Meijer, Inc.; Meijer Distribution, Inc.; OSI Restaurant Partners, LLC; Publix Super Markets, Inc.; Supervalu Inc.; Wakefern Food Corporation); Kroger Plaintiffs (The Kroger Co.; Hy-Vee, Inc.; Albertsons Companies, Inc.); Howard Samuels Plaintiffs (Howard Samuels as Trustee in Bankruptcy for Central Grocers, Inc.; CBBC Opco, LLC d/b/a Colorado Boxed Beef; King Solomon Foods, Inc.); W. Lee Flowers; and Ahold Delhaize USA, Inc.

2. The following deadlines in Paragraph 2, including the deadline for substantial completion of document production, shall apply to discovery relating to the Current Direct Action Plaintiffs to the extent they have not already met the deadlines. This Order establishes the **latest date** by which the items below should be completed, but does not prevent the parties from negotiating earlier deadlines.

<u>Event</u>	<u>Deadline</u>
Deadline For Defendants To Serve Initial Rule 33 And Rule 34 Requests On Current Direct Action Plaintiffs	September 14, 2018
Deadline To Hold Rule 26(f) Conferences	September 21, 2018
Current Direct Action Plaintiffs To Make Disclosures Described In Dkt. No. 264 (Order Regarding Disclosure Of Information) And Rule 26(a) Disclosures	21 days after the respective parties' Rule 26(f) Conference ³
Deadline For Current Direct Action Plaintiffs' Objections And Responses To Initial Rule 33 And 34 Requests	30 days after service on respective Current Direct Action Plaintiff, but no earlier than September 17, 2018 for those served prior to the date of this order
Deadline For Defendants To Propose Keyword Search Terms To Be Applied To Current Direct Action Plaintiffs' Documents	October 1, 2018

³ Defendants are not prohibited from serving additional Rule 33, 34, or 36 Requests on Direct Action Plaintiffs after September 14, 2018, in accordance with the Rules of Civil Procedure and Scheduling Order Nos. 1 and 2 (including as superseded or amended). Prior to the entry of this Order, Defendants and the Kroger Plaintiffs (*i.e.*, Kroger Co.; Hy-Vee, Inc.; Albertsons Companies, Inc.) agreed that the Plaintiffs in this group would make disclosures pursuant to Dkt. 264 by September 4, 2018. Similarly, Defendants and the Associated Grocers of the South Plaintiffs (*i.e.*, Associated Grocers of the South, Inc., Meijer, Inc.; Meijer Distribution, Inc.; OSI Restaurant Partners, LLC; Publix Super Markets, Inc.; Supervalu Inc.; and Wakefern Food Corporation) agreed that the Plaintiffs in this group would make disclosures pursuant to Dkt. 264 by September 14, 2018. The 21-day deadline for both Rule 26(a) and Dkt. 264 disclosures applies to all other Direct Action Plaintiffs unless otherwise agreed by the parties or ordered by the Court.

<u>Event</u>	<u>Deadline</u>
Current Direct Action Plaintiffs To Disclose Keyword Search Tools And/Or TAR/CAL Tools⁴	October 1, 2018
Current Direct Action Plaintiffs To Propose Document Custodians And Non-Custodial Document Sources To Be Applied To Current Direct Action Plaintiffs	October 5, 2018
Commencement Of Rolling Production Of Documents By Current Direct Action Plaintiffs, Prioritizing Custodians As Agreed By The Parties Or Ordered By The Court (Including Priority Custodians' Data Described By ESI Protocol Order ¶ V(G) (Dkt. 459))	30 days after agreement or order on initial search methodology and custodians
Deadline For Second Phase Search Proposals By Defendants To Current Direct Action Plaintiffs⁵	45 days after commencement of rolling production by each respective Current Direct Action Plaintiff or as agreed by the parties
Substantial Completion Of Document Productions For Current Direct Action Plaintiffs⁶	90 days after agreement or order on search methodology and custodians
Defendants' Deadline to Answer Current Direct Action Plaintiffs' Initially-Filed Complaints (Dkts. 961, 967)	February 15, 2019
Deadline To Amend Current Direct Action Plaintiffs' Complaints	April 15, 2019
Defendants' Deadline To Answer Current Direct Action Plaintiffs' Amended Complaints	July 15, 2019

⁴ See Order Regarding Search Methodology for Electronically Stored Information (Dkt. 586), ¶¶ II(A)(2) & II(B)(2).

⁵ See Order Regarding Search Methodology for Electronically Stored Information (Dkt. 586), ¶ II(B)(4)(a).

⁶ Each Current Direct Action Plaintiff shall produce a privilege log consistent with the requirements set forth in the Order Regarding Production of Electronically Stored Information and Paper Documents (Dkt. 459) and results from the Validation Protocol as set forth in the Order Regarding Search Methodology for Electronically Stored Information (Dkt. 586) within 53 days of the deadline for Substantial Completion of Document Productions.

PROCEDURES FOR FUTURE DIRECT ACTION PLAINTIFF CASES

1. Consistent with the Court's February 8, 2018 and March 9, 2018 Orders (Dkt. Nos. 714 and 785), the Court intends that, as applicable and with necessary modifications, all orders previously entered in *In re Broiler Chicken Antitrust Litigation*, Case No. 16-cv-8637, shall apply to any Future Direct Action Plaintiff cases.⁷

2. Liaison Counsel for Direct Action Plaintiffs will provide Future Direct Action Plaintiffs with copies of or access to third party and Defendant productions, as well as discovery requests and responses from any party previously provided to Liaison Counsel, in this matter to date.

3. The following deadlines, triggered by the date on which the Future Direct Action Complaint is consolidated in the above-captioned matter (unless stated otherwise), shall apply to discovery relating to the Future Direct Action Plaintiffs unless the parties otherwise agree.

<u>Event</u>	<u>Deadline (Anchored to Date Consolidated in Broiler Case Unless Noted Otherwise)</u>
Defendants To Serve Consolidated Rule 33 And 34 Requests On Direct Action Plaintiffs⁸	14 days

⁷ "Future Direct Action Plaintiff" means any direct action plaintiff in *In re Broiler Chicken Antitrust Litigation* who had not, as of the date of Scheduling Order No. 7 (September 13, 2018), filed a Complaint in this matter, effected service of its Complaint upon all Defendants, and been consolidated on the *In re Broiler Chickens Antitrust Litigation* docket. As of the date of this Order, known Future Direct Action Plaintiffs are United Supermarkets Plaintiffs (United Supermarkets, LLC; Krispy Krunchy Foods, LLC; Cheney Bros., Inc.); BJ's Wholesale Club, Inc.; Maximum Quality Foods, Inc.; Associated Wholesale Grocers, Inc.; and Shamrock Foods Plaintiffs (Shamrock Foods Company and United Food Service, Inc.).

⁸ Defendants are not prohibited from serving additional Rule 33, 34, or 36 Requests on Direct Action Plaintiffs after the initial set of requests, in accordance with the Rules of Civil Procedure and Scheduling Order Nos. 1 and 2 (including as superseded or amended).

<u>Event</u>	<u>Deadline</u> <u>(Anchored to</u> <u>Date</u> <u>Consolidated in</u> <u>Broiler Case</u> <u>Unless Noted</u> <u>Otherwise)</u>
Direct Action Plaintiffs To Make Disclosures Described In Dkt. No. 264 (Order Regarding Disclosure Of Information) And Rule 26(a) Disclosures Direct Action Plaintiffs To Propose Document Custodians And Non-Custodial Document Sources To Be Applied To Direct Action Plaintiff⁹	30 days after Rule 33 and Rule 34 Requests are served
Deadline For Direct Action Plaintiffs' Written Objections and Responses To Initial Rule 33 and 34 Requests	30 days after Rule 33 and Rule 34 Requests are served
Deadline For Defendants To Propose Keyword Search Terms To Be Applied to Direct Action Plaintiffs' Documents	50 days
Direct Action Plaintiffs To Disclose Keyword Search Tools And/Or TAR/CAL Tools¹⁰	50 days
Date By Which Parties Will Submit Disputes Regarding Document Custodians, Non-Custodial Document Sources, And Search Process To The Court For Resolution¹¹	71 days
Commencement Of Rolling Production Of Documents By Direct Action Plaintiffs, Prioritizing Custodians As Agreed By The Parties Or Ordered By The Court (Including Priority Custodians' Data Described By ESI Protocol Order ¶ V(G) (Dkt. 459))	30 days after agreement or order on initial search methodology and custodians

⁹ Under Scheduling Order No. 7, the deadline to provide Dkt. No. 264 and Rule 26(a) disclosures and to disclose custodial and non-custodial sources is November 1, 2018 for Plaintiff BJ's Wholesale Club, Inc.; November 20, 2018 for Plaintiff Associated Wholesale Grocers, Inc.; and November 23, 2018 for United Supermarkets Plaintiffs. These deadlines will continue to apply under Scheduling Order No. 9.

¹⁰ See Order Regarding Search Methodology for Electronically Stored Information (Dkt. 586), ¶¶ II(A)(2) & II(B)(2).

¹¹ The parties will discuss search process disputes with the Special Master as appropriate.

<u>Event</u>	<u>Deadline</u> <u>(Anchored to</u> <u>Date</u> <u>Consolidated in</u> <u>Broiler Case</u> <u>Unless Noted</u> <u>Otherwise)</u>
Deadline For Second Phase Search Proposals By Requesting Parties To Direct Action Plaintiffs¹²	45 days after commencement of rolling production by each respective Future Direct Action Plaintiff or as agreed by the parties
Substantial Completion Of Document Productions For Direct Action Plaintiffs¹³	90 days after agreement or order on search methodology and custodians
Defendants' Deadline To Answer Direct Action Plaintiffs' Complaints Consolidated Between September 13, 2018 and January 15, 2019¹⁴¹⁵	February 15, 2019
Deadline To Amend Direct Action Plaintiffs' Complaints Consolidated Between September 13, 2018 and January 15, 2019	April 15, 2019
Defendants' Deadline To Answer Direct Action Plaintiffs' Amended Complaints Consolidated Between September 13, 2018 and January 15, 2019	June 15, 2019

¹² See Order Regarding Search Methodology for Electronically Stored Information (Dkt. 586), ¶ II(B)(4)(a).

¹³ Each Future Direct Action Plaintiff shall produce a privilege log consistent with the requirements set forth in the Order Regarding Production of Electronically Stored Information and Paper Documents (Dkt. 459) and results from the Validation Protocol as set forth in the Order Regarding Search Methodology for Electronically Stored Information (Dkt. 586) within 53 days of the deadline for Substantial Completion of Document Productions.

¹⁴ Unless otherwise agreed, if a Future Direct Action Plaintiff specifically requests that affirmative defenses be filed separately and before an answer, Defendants will file such defenses 45 days after receiving the request. Otherwise, Defendants will include affirmative defenses in their answers filed on the agreed-upon date.

¹⁵ For Future Direct Action Plaintiff complaints filed after January 15, 2019, Defendants and those Direct Action Plaintiffs will meet and confer regarding a reasonable answer date.

SO ORDERED.

Dated: November 19, 2018

A handwritten signature in blue ink, appearing to read "Jeffrey T. Gilbert", is written over a horizontal line.

HON. JEFFREY T. GILBERT
U.S. MAGISTRATE JUDGE